

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:) **Mail Stop Appeal Brief - Patents**
Isaac K. ELLIOTT et al.)
Application No.: 09/879,983) Group Art Unit: 2616
Filed: June 14, 2001)
For: SYSTEM AND METHOD FOR)
PROVIDING REQUESTED)
QUALITY OF SERVICE IN A)
HYBRID NETWORK)

APPEAL BRIEF

U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

This Appeal Brief is submitted in response to the final Office Action, dated June 13, 2007, and in support of the Notice of Appeal, filed October 12, 2007.

I. REAL PARTY IN INTEREST

The real party in interest of the present application, solely for purposes of identifying and avoiding potential conflicts of interest by board members due to working in matters in which the member has a financial interest, is Verizon Communications Inc. and its subsidiary companies,

which currently include Verizon Business Global, LLC (formerly MCI, LLC) and Celco Partnership (doing business as Verizon Wireless, and which includes as a minority partner affiliates of Vodafone Group Plc). Verizon Communications Inc. or one of its subsidiary companies is an assignee of record of the present application.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

Appellants are unaware of any related appeals, interferences or judicial proceedings.

III. STATUS OF CLAIMS

Claims 1-11 are pending in this application.

Claims 1-11 were finally rejected in the final Office Action, dated June 13, 2007, and are the subject of the present appeal. These claims are reproduced in the Claim Appendix of this Appeal Brief.

IV. STATUS OF AMENDMENTS

No amendment was filed subsequent to the final Office Action, dated June 13, 2007. Appellants filed a Request for Reconsideration on August 13, 2007. A subsequent Advisory Action, dated September 14, 2007, indicated that the proposed amendment would not be entered because the proposed amendment is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Appellants note that the Request for Reconsideration, filed on August 13, 2007, did not contain a proposed amendment. Appellants

assume that the Examiner's indication that the proposed amendment would not be entered is an oversight by the Examiner.

In addition, the Advisory Action indicated that the affidavit or other evidence filed after the final action, but before or on the date of filing a Notice of Appeal, would not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. Appellants note that the Request for Reconsideration, filed on August 13, 2007, did not contain an affidavit or other evidence. Appellants assume that the Examiner's indication that the affidavit or other evidence would not be entered is another oversight by the Examiner.

Further, the Advisory indicated that the Request for Reconsideration has been considered, but did not place the application in condition for allowance.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In the paragraphs that follow, a concise explanation of the independent claims, each dependent claim argued separately, and the claims reciting means-plus-function or step-plus-function language that are involved in this appeal will be provided by referring, in parenthesis, to examples of where support can be found in the specification and drawings.

Claim 1 is directed to a method for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising receiving a request for a media communication by a resource management processor connected to the hybrid network (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 5-6); determining an amount of resources in the hybrid network necessary to obtain a requested quality of service

(e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 7-8); allocating necessary resources to provide the requested quality of service on the hybrid network (e.g., Fig. 32; p. 113, lines 9-11, p. 652, lines 9-10); and releasing the necessary resources upon termination of the media communication (e.g., Fig. 32; p. 113, lines 13-16, p. 652, lines 11-12).

Claim 2 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, p. 652, lines 13-15); and transmitting the bill detail record to a call server connection to the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, col. 652, lines 16-17).

Claim 3 recites transmitting a message to the call server with a third entry indicative of time of termination of the medial communication (e.g., p. 623, lines 14-21, p. 652, lines 18-20).

Claim 4 recites creating an additional entry in the bill detail record indicative of a type of service provided by the hybrid network (e.g., p. 51, lines 6-10, col. 652, lines 21-23).

Claim 7 is directed to a method for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising receiving a request for a media communication (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 5-6); determining an amount of resources in the hybrid network necessary to obtain a requested quality of service (e.g., Fig. 32; p. 113, lines 1-8, p. 652, lines 7-8); and allocating necessary resources to provide the requested quality of service on the hybrid network (e.g., Fig. 32; p. 113, lines 13-16, p. 652, lines 11-12).

Claim 9 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, p. 652,

lines 13-15), and transmitting the bill detail record to a call server associated with the hybrid network (e.g., Fig. 19B; p. 52, line 22 to p. 53, line 9, col. 652, lines 16-17).

Claim 10 is directed to a system for media communication over a hybrid network which includes a circuit switched network and a packet switched network (e.g., Figs. 1F and 1G), comprising a network device (e.g., Fig. 1 F and 1G) configured to receive a request for a media communication (e.g., p. 113, lines 1-8, p. 652, lines 5-6), determine an amount of resources in the hybrid network necessary to obtain a requested quality of service (e.g., p. 113, lines 1-8, p. 652, lines 7-8), and allocate the amount of resources to provide the requested quality of service on the hybrid network (e.g., p. 113, lines 9-11, p. 652, lines 9-10).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over CIVANLAR et al. (U.S. Patent No. 6,298,120) in view of ANDERSEN et al. (U.S. Patent No. 5,674,003).

VII. ARGUMENTS

A. **The rejection under 35 U.S.C. § 103(a) based on CIVANLAR et al. (U.S. Patent No. 6,298,120) and ANDERSEN et al. (U.S. Patent No. 5,674,003) should be reversed.**

The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention always rests upon the Examiner. In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). In rejecting a claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the conclusion of obviousness. In re Warner, 379 F.2d 1011, 154

U.S.P.Q. 173 (CCPA 1967). Based upon the objective evidence of record, the Examiner is required to make the factual inquiries mandated by Graham v. John Deere Co., 86 S.Ct. 684, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007). The Examiner is also required to explain how and why one having ordinary skill in the art would have been realistically motivated to modify an applied reference and/or combine applied references to arrive at the claimed invention. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988).

1. Claims 1, 5, and 6.

Independent claim 1 is directed to a method for media communication over a hybrid network that includes a circuit switched network and a packet switched network. The method includes receiving a request for a media communication by a resource management processor connected to the hybrid network; determining an amount of resources in the hybrid network necessary to obtain a requested quality of service; allocating necessary resources to provide the requested quality of service on the hybrid network; and releasing the necessary resources upon termination of the media communication. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

At the outset, Appellants point out that the Examiner has not made a proper rejection under 35 U.S.C. § 103(a). To make a proper rejection under 35 U.S.C. § 103(a), the Examiner should set forth in the Office Action (1) the relevant teachings of the prior art reference(s) relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (2) the difference(s) in the claim over the applied reference(s), (3) the

proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (4) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. See M.P.E.P. § 706.02(j). With respect to claim 1, the Examiner provides no indication as to what feature(s) of claim 1 the Examiner relies on CIVANLAR et al. for disclosing, what feature(s) the Examiner admits that CIVANLAR et al. does not disclose, and the proposed modification of the CIVANLAR et al. document necessary to arrive at the claimed subject matter. Instead, the Examiner merely summarizes portions of CIVANLAR et al. and ANDERSEN et al., leaving Appellants to guess as to what features of claim 1 the Examiner relies on CIVANLAR et al. for disclosing and on ANDERSEN et al. for disclosing. The Examiner has not made a proper rejection under 35 U.S.C. § 103(a). Accordingly, Appellants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Nevertheless, CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest, for example, determining an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on step 301 in Fig. 3 of CIVANLAR et al. as allegedly disclosing this feature (final Office Action, p. 6). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Step 301 in Fig. 3 of CIVANLAR et al. discloses that a client specifies to an agent at least one service attribute. CIVANLAR et al. discloses that the service attribute can include path attributes that specify the communication medium to be employed and the quality of service that is desired (col. 4, lines 50-52). CIVANLAR et al. does not disclose or suggest determining an

amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

CIVANLAR et al. specifically discloses that the communication path between a calling party and a called party includes the public Internet, an internet that is privately owned and managed, the circuit switched telephone network, OR a packet network, such as an ATM or frame relay network (emphasis added) (col. 6, lines 5-11). CIVANLAR et al. does not disclose or suggest a hybrid network at all, much less a hybrid network that includes a circuit switched network and a packet switched network, as specifically recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

The Examiner appears to allege that the Internet is a hybrid network (see, for example, final Office Action, p. 6). Appellants disagree.

The Internet is a packet switched network. The Internet is not a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1.

The disclosure of ANDERSEN et al. does not remedy the above deficiencies in the disclosure of CIVANLAR et al. For example, ANDERSEN et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. The Examiner appears to also point to ANDERSEN et al.'s telephone network 30 as corresponding to a hybrid network (final Office Action, p. 8). Appellants disagree.

ANDERSEN et al. specifically discloses that telephone network 30 is a connection oriented telephony network (col. 4, lines 52-54). ANDERSEN et al. does not disclose or suggest that telephone network 30 is a hybrid network that includes a circuit switched network and a

packet switched network, as recited in claim 1. Thus, ANDERSEN et al. cannot disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Further with respect to the above feature of claim 1, the Examiner alleges:

... recitation "*circuit switched and a packet switched*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone ...

(final Office Action, pp. 3 and 4). Appellants submit that the Examiner has not established a *prima facie* basis to deny patentability.

Appellants' claim 1 specifically recites in the preamble that a hybrid network includes a circuit switched network and a packet switched network. The body of Appellants' claim 1 specifically refers to the hybrid network (which corresponds to the hybrid network recited in Appellants' preamble). The Examiner appears to allege that merely because the recitation that the hybrid network includes a circuit switched network and a packet switched network occurs in the preamble, patentable weight cannot be given. Appellants submit that the Examiner's allegation lacks merit. The recitation that the hybrid network includes a circuit switched network and a packet switched network does not merely recite a purpose of a process or the intended use of a structure. Moreover, the body of claim 1 depends on the recitation that the hybrid network includes a circuit switched network and a packet switched network for completeness. Appellants submit that by ignoring specifically recited features of Appellants' claim 1, the Examiner's rejection of claim 1 is improper.

Further with respect to the above feature, the Examiner alleges:

Applicant's attention is directed to Figs. 1 and 2 of Civanlar for conducting a voice communication through a hybrid network which includes a packet internetwork, such as the Internet, connected to a circuit switched telephone network. Thus, a hybrid network including both a circuit switched telephone network (PSTN) and an Internet-based packet voice network (Internet).

(final Office Action, p. 5). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Fig. 1 of CIVANLAR et al. depicts an intelligent telephone network 100 that includes a long distance network 118 through which a telephone call can be placed. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

Fig. 2 of CIVANLAR et al. depicts an example of individual computer networks 20 and 22 that communicate with one another via Internet 28. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 1. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 1.

In paragraph 2 of the Advisory Action (p. 2), the Examiner presents a number of allegations regarding the difference between a *prima facie* case of obviousness and a substantial new question of patentability. Yet, the Examiner does not even attempt to explain how these allegations are relevant to Appellants' claim 1 or Appellants' arguments regarding the Examiner's

allegations with respect to claim 1. Accordingly, Appellants request that the honorable Board dismiss these allegations as irrelevant.

In paragraph 3 of the Advisory Action (pp. 2-3), the Examiner alleges that CIVANLAR et al. discloses that network 100 may be or include a circuit switched network, a packet switched network, a data network, an IP telephony network, or include or be a combination thereof. Appellants submit that the Examiner's allegation is unsupported by the CIVANLAR et al. disclosure. Nowhere does CIVANLAR et al. disclose or remotely suggest that CIVANLAR et al.'s network 100 includes "a circuit-switched network, a packet-switched network, a data network, an IP telephony network, or include or be a combination thereof," as the Examiner alleges.

Since CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, CIVANLAR et al. and ANDERSEN et al. cannot disclose or suggest allocating necessary resources to provide the requested quality of service on the hybrid network, as also recited in claim 1.

With respect to motivation, the Examiner alleges:

[o]ne skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Andersen's novel use of logical networks and a method for setting up a virtual connection to transfer packets through the router apparatus into Civanlar' quality of service parameters in hybrid network communications. Therefore, It would have been obvious ... to apply Andersen et al.'s mechanism for accessing unique features of telephony networks from a protocol-independent data transport interface into Civanlar et al.'s intelligent processing for establishing communication over the internet with the motivation being to provide a system and method for providing requested quality of service in a hybrid network

(final Office Action, pp. 8-9). Appellants respectfully submit that the Examiner's motivation is insufficient for establishing a *prima facie* case of obviousness.

At the outset, Appellants note that ANDERSEN et al. does not mention "logical networks." Thus, it is unclear to what "Andersen's novel use of logical networks" is referring. Moreover, as indicated above, CIVANLAR et al. does not disclose or suggest hybrid network communications. Thus, the Examiner's foundation for combining ANDERSEN et al. with CIVANLAR et al. is flawed.

Appellants submit that it is clear that the Examiner's motivation statement is based on impermissible hindsight. The Examiner's allegation is merely a conclusory statement regarding an alleged benefit of combining ANDERSEN et al. with CIVANLAR et al. Such motivation statements are insufficient for establishing a *prima facie* case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. Appellants submit that the Examiner's purported motivation to combine the cited references is merely conclusory and based on impermissible hindsight.

For at least the foregoing reasons, Appellants submit that the rejection of claim 1 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper. Accordingly, Appellants request that the rejection be reversed.

Claims 5 and 6 depend from claim 1. Therefore, Appellants respectfully request that the rejection of claims 5 and 6 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. be reversed for at least the reasons given above with respect to claim 1.

2. Claim 2.

Claim 2 depends from claim 1. Therefore, this claim is patentable over CIVANLAR et al. and ANDERSEN et al. for at least the reasons given above with respect to claim 1. Moreover, this claim recites additional features not disclosed or suggested by CIVANLAR et al. and ANDERSEN et al.

Claim 2 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network and transmitting the bill detail record to a call server connection to the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

Despite repeated requests by Appellants, the Examiner has never addressed these features in a rejection based on CIVANLAR et al. and ANDERSEN et al. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 2.

CIVANLAR et al. and ANDERSEN et al. do not disclose the above features of claim 2. Moreover, the Examiner does not explain why it would have been obvious to incorporate the features of claim 2 into the CIVANLAR et al. and ANDERSEN et al. systems. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 2. Appellants respectfully request that the rejection of claim 2 be reconsidered and withdrawn.

For at least these additional reasons, Appellants submit that the rejection of claim 2 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper.

Accordingly, Appellants request that the rejection be reversed.

3. Claim 3.

Claim 3 depends from claim 2. Therefore, this claim is patentable over CIVANLAR et al. and ANDERSEN et al. for at least the reasons given above with respect to claim 2.

Moreover, this claim recites an additional feature not disclosed or suggested by CIVANLAR et al. and ANDERSEN et al.

Claim 3 recites transmitting a message to the call server with a third entry indicative of time of termination of the media communication. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this feature.

The Examiner has never addressed the feature of claim 3 in a rejection based on CIVANLAR et al. and ANDERSEN et al. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 3.

CIVANLAR et al. and ANDERSEN et al. do not disclose the above feature of claim 3. Moreover, the Examiner does not explain why it would have been obvious to incorporate the feature of claim 3 into the CIVANLAR et al. and ANDERSEN et al. systems. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 3. Appellants respectfully request that the rejection of claim 3 be reconsidered and withdrawn.

For at least these additional reasons, Appellants submit that the rejection of claim 3 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper.

Accordingly, Appellants request that the rejection be reversed.

4. Claim 4.

Claim 4 depends from claim 3. Therefore, this claim is patentable over CIVANLAR et al. and ANDERSEN et al. for at least the reasons given above with respect to claim 3.

Moreover, this claim recites an additional feature not disclosed or suggested by CIVANLAR et al. and ANDERSEN et al.

Claim 4 recites creating an additional entry in the bill detail record indicative of a type of service provided by the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this feature.

The Examiner has never addressed the feature of claim 4 in a rejection based on CIVANLAR et al. and ANDERSEN et al. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 4.

Since CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest a call detail record, CIVANLAR et al. and ANDERSEN et al. cannot disclose or suggest creating an additional entry in the bill detail record indicative of a type of service provided by the hybrid network, as recited in claim 4. Moreover, the Examiner does not explain why it would have been obvious to incorporate the feature of claim 4 into the CIVANLAR et al. and ANDERSEN et al. systems. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 4. Appellants respectfully request that the rejection of claim 4 be reconsidered and withdrawn.

For at least these additional reasons, Appellants submit that the rejection of claim 4 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper. Accordingly, Appellants request that the rejection be reversed.

5. Claims 7 and 8.

Independent claim 7 is directed to a method for media communication over a hybrid network which includes a circuit switched network and a packet switched network. The method includes receiving a request for a media communication; determining an amount of resources in the hybrid network necessary to obtain a requested quality of service; and allocating necessary resources to provide the requested quality of service on the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

At the outset, Appellants point out that the Examiner has not made a proper rejection under 35 U.S.C. § 103(a). To make a proper rejection under 35 U.S.C. § 103(a), the Examiner should set forth in the Office Action (1) the relevant teachings of the prior art reference(s) relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (2) the difference(s) in the claim over the applied reference(s), (3) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (4) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. See M.P.E.P. § 706.02(j). With respect to claim 7, the Examiner provides no indication as to what feature(s) of claim 7 the Examiner relies on CIVANLAR et al. for disclosing, what feature(s) the Examiner admits that CIVANLAR et al. does not disclose, and the proposed modification of the CIVANLAR et al. document necessary to arrive at the claimed subject matter. Instead, the Examiner merely summarizes portions of CIVANLAR et al. and ANDERSEN et al., leaving Appellants to guess as to what features of claim 7 the Examiner relies on CIVANLAR et al. for disclosing and on

ANDERSEN et al. for disclosing. The Examiner has not made a proper rejection under 35 U.S.C. § 103(a). Accordingly, Appellants respectfully request that the rejection of claim 7 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Nevertheless, CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest, for example, determining an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on step 301 in Fig. 3 of CIVANLAR et al. as allegedly disclosing this feature (final Office Action, p. 6). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Step 301 in Fig. 3 of CIVANLAR et al. discloses that a client specifies to an agent at least one service attribute. CIVANLAR et al. discloses that the service attribute can include path attributes that specify the communication medium to be employed and the quality of service that is desired (col. 4, lines 50-52). CIVANLAR et al. does not disclose or suggest determining an amount of resources in a hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 7.

CIVANLAR et al. specifically discloses that the communication path between a calling party and a called party includes the public Internet, an internet that is privately owned and managed, the circuit switched telephone network, OR a packet network, such as an ATM or frame relay network (emphasis added) (col. 6, lines 5-11). CIVANLAR et al. does not disclose or suggest a hybrid network at all, much less a hybrid network that includes a circuit switched network and a packet switched network, as specifically recited in claim 7. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

The Examiner appears to allege that the Internet is a hybrid network (see, for example, final Office Action, p. 6). Appellants disagree.

The Internet is a packet switched network. The Internet is not a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 7.

The disclosure of ANDERSEN et al. does not remedy the above deficiencies in the disclosure of CIVANLAR et al. For example, ANDERSEN et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 7. The Examiner appears to also point to ANDERSEN et al.'s telephone network 30 as corresponding to a hybrid network (final Office Action, p. 8). Appellants disagree.

ANDERSEN et al. specifically discloses that telephone network 30 is a connection oriented telephony network (col. 4, lines 52-54). ANDERSEN et al. does not disclose or suggest that telephone network 30 is a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 7. Thus, ANDERSEN et al. cannot disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

Further with respect to the above feature of claim 7, the Examiner alleges:

... recitation "*circuit switched and a packet switched*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone ...

(final Office Action, pp. 3 and 4). Appellants submit that the Examiner has not established a *prima facie* basis to deny patentability.

Appellants' claim 7 specifically recites in the preamble that a hybrid network includes a circuit switched network and a packet switched network. The body of Appellants' claim 7 specifically refers to the hybrid network (which corresponds to the hybrid network recited in Appellants' preamble). The Examiner appears to allege that merely because the recitation that the hybrid network includes a circuit switched network and a packet switched network occurs in the preamble, patentable weight cannot be given. Appellants submit that the Examiner's allegation lacks merit. The recitation that the hybrid network includes a circuit switched network and a packet switched network does not merely recite a purpose of a process or the intended use of a structure. Moreover, the body of claim 7 depends on the recitation that the hybrid network includes a circuit switched network and a packet switched network for completeness. Appellants submit that by ignoring specifically recited features of Appellants' claim 7, the Examiner's rejection of claim 7 is improper.

Further with respect to the above feature, the Examiner alleges:

Applicant's attention is directed to Figs. 1 and 2 of Civanlar for conducting a voice communication through a hybrid network which includes a packet internetwork, such as the Internet, connected to a circuit switched telephone network. Thus, a hybrid network including both a circuit switched telephone network (PSTN) and an Internet-based packet voice network (Internet).

(final Office Action, p. 5). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Fig. 1 of CIVANLAR et al. depicts an intelligent telephone network 100 that includes a long distance network 118 through which a telephone call can be placed. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in

claim 7. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

Fig. 2 of CIVANLAR et al. depicts an example of individual computer networks 20 and 22 that communicate with one another via Internet 28. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 7. Thus, this section of CIVANLAR et al. cannot disclose or suggest determining an amount of resources in the hybrid network necessary to obtain a requested quality of service, as recited in claim 7.

In paragraph 2 of the Advisory Action (p. 2), the Examiner presents a number of allegations regarding the difference between a *prima facie* case of obviousness and a substantial new question of patentability. Yet, the Examiner does not even attempt to explain how these allegations are relevant to Appellants' claim 7 or Appellants' arguments regarding the Examiner's allegations with respect to claim 7. Accordingly, Appellants request that the honorable Board dismiss these allegations as irrelevant.

In paragraph 3 of the Advisory Action (pp. 2-3), the Examiner alleges that CIVANLAR et al. discloses that network 100 may be or include a circuit switched network, a packet switched network, a data network, an IP telephony network, or include or be a combination thereof. Appellants submit that the Examiner's allegation is unsupported by the CIVANLAR et al. disclosure. Nowhere does CIVANLAR et al. disclose or remotely suggest that CIVANLAR et al.'s network 100 includes "a circuit-switched network, a packet-switched network, a data

network, an IP telephony network, or include or be a combination thereof," as the Examiner alleges.

Since CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest determining an amount of resources in a hybrid network necessary to obtain a requested quality of service, CIVANLAR et al. and ANDERSEN et al. cannot disclose or suggest allocating necessary resources to provide the requested quality of service on the hybrid network, as also recited in claim 7.

With respect to motivation, the Examiner alleges:

[o]ne skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Andersen's novel use of logical networks and a method for setting up a virtual connection to transfer packets through the router apparatus into Civanlar' quality of service parameters in hybrid network communications. Therefore, It would have been obvious ... to apply Andersen et al.'s mechanism for accessing unique features of telephony networks from a protocol-independent data transport interface into Civanlar et al.'s intelligent processing for establishing communication over the internet with the motivation being to provide a system and method for providing requested quality of service in a hybrid network

(final Office Action, pp. 8-9). Appellants respectfully submit that the Examiner's motivation is insufficient for establishing a *prima facie* case of obviousness.

At the outset, Appellants note that ANDERSEN et al. does not mention "logical networks." Thus, it is unclear to what "Andersen's novel use of logical networks" is referring. Moreover, as indicated above, CIVANLAR et al. does not disclose or suggest hybrid network communications. Thus, the Examiner's foundation for combining ANDERSEN et al. with CIVANLAR et al. is flawed.

Appellants submit that it is clear that the Examiner's motivation statement is based on impermissible hindsight. The Examiner's allegation is merely a conclusory statement regarding

an alleged benefit of combining ANDERSEN et al. with CIVANLAR et al. Such motivation statements are insufficient for establishing a prima facie case of obviousness. In this respect, Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. Appellants submit that the Examiner's purported motivation to combine the cited references is merely conclusory and based on impermissible hindsight.

For at least the foregoing reasons, Appellants submit that the rejection of claim 7 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper.

Accordingly, Appellants request that the rejection be reversed.

Claim 8 depend from claim 7. Therefore, Appellants respectfully request that the rejection of claim 8 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. be reversed for at least the reasons given above with respect to claim 7.

6. Claim 9.

Claim 9 depends from claim 7. Therefore, this claim is patentable over CIVANLAR et al. and ANDERSEN et al. for at least the reasons given above with respect to claim 7. Moreover, this claim recites additional features not disclosed or suggested by CIVANLAR et al. and ANDERSEN et al.

Claim 9 recites creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network and transmitting the bill detail record to a call server

associated with the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

Despite repeated requests by Appellants, the Examiner has never addressed these features in a rejection based on CIVANLAR et al. and ANDERSEN et al. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 9.

CIVANLAR et al. and ANDERSEN et al. do not disclose the above features of claim 9. Moreover, the Examiner does not explain why it would have been obvious to incorporate the features of claim 9 into the CIVANLAR et al. and ANDERSEN et al. systems. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 9. Appellants respectfully request that the rejection of claim 9 be reconsidered and withdrawn.

For at least these additional reasons, Appellants submit that the rejection of claim 9 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper. Accordingly, Appellants request that the rejection be reversed.

7. Claims 10 and 11.

Independent claim 10 is directed to a system for media communication over a hybrid network which includes a circuit switched network and a packet switched network. The system includes a network device configured to receive a request for a media communication, determine an amount of resources in the hybrid network necessary to obtain a requested quality of service, and allocate the amount of resources to provide the requested quality of service on the hybrid network. CIVANLAR et al. and ANDERSEN et al., whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

At the outset, Appellants point out that the Examiner has not made a proper rejection under 35 U.S.C. § 103(a). To make a proper rejection under 35 U.S.C. § 103(a), the Examiner should set forth in the Office Action (1) the relevant teachings of the prior art reference(s) relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (2) the difference(s) in the claim over the applied reference(s), (3) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (4) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. See M.P.E.P. § 706.02(j). With respect to claim 10, the Examiner provides no indication as to what feature(s) of claim 10 the Examiner relies on CIVANLAR et al. for disclosing, what feature(s) the Examiner admits that CIVANLAR et al. does not disclose, and the proposed modification of the CIVANLAR et al. document necessary to arrive at the claimed subject matter. Instead, the Examiner merely summarizes portions of CIVANLAR et al. and ANDERSEN et al., leaving Appellants to guess as to what features of claim 10 the Examiner relies on CIVANLAR et al. for disclosing and on ANDERSEN et al. for disclosing. The Examiner has not made a proper rejection under 35 U.S.C. § 103(a). Accordingly, Appellants respectfully request that the rejection of claim 10 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Nevertheless, CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest, for example, a network device configured to determine an amount of resources in the hybrid network necessary to obtain a requested quality of service. The Examiner appears to rely on step 301 in Fig. 3 of CIVANLAR et al. as allegedly disclosing this feature (final Office Action, p. 6). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Step 301 in Fig. 3 of CIVANLAR et al. discloses that a client specifies to an agent at least one service attribute. CIVANLAR et al. discloses that the service attribute can include path attributes that specify the communication medium to be employed and the quality of service that is desired (col. 4, lines 50-52). CIVANLAR et al. does not disclose or suggest a network device configured to determine an amount of resources in the hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

CIVANLAR et al. specifically discloses that the communication path between a calling party and a called party includes the public Internet, an internet that is privately owned and managed, the circuit switched telephone network, OR a packet network, such as an ATM or frame relay network (emphasis added) (col. 6, lines 5-11). CIVANLAR et al. does not disclose or suggest a hybrid network at all, much less a hybrid network that includes a circuit switched network and a packet switched network, as specifically recited in claim 10. Thus, this section of CIVANLAR et al. cannot disclose or suggest a network device configured to determine an amount of resources in the hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

The Examiner appears to allege that the Internet is a hybrid network (see, for example, final Office Action, p. 6). Appellants disagree.

The Internet is a packet switched network. The Internet is not a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 10.

The disclosure of ANDERSEN et al. does not remedy the above deficiencies in the disclosure of CIVANLAR et al. For example, ANDERSEN et al. does not disclose a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 10. The Examiner appears to also point to ANDERSEN et al.'s telephone network 30 as corresponding to a hybrid network (final Office Action, p. 8). Appellants disagree.

ANDERSEN et al. specifically discloses that telephone network 30 is a connection oriented telephony network (col. 4, lines 52-54). ANDERSEN et al. does not disclose or suggest that telephone network 30 is a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 10. Thus, ANDERSEN et al. cannot disclose or suggest a network device configured to determine an amount of resources in the hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

Further with respect to the above feature of claim 10, the Examiner alleges:

... recitation "*circuit switched and a packet switched*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone ...

(final Office Action, pp. 3 and 4). Appellants submit that the Examiner has not established a *prima facie* basis to deny patentability.

Appellants' claim 10 specifically recites in the preamble that a hybrid network includes a circuit switched network and a packet switched network. The body of Appellants' claim 10 specifically refers to the hybrid network (which corresponds to the hybrid network recited in Appellants' preamble). The Examiner appears to allege that merely because the recitation that

the hybrid network includes a circuit switched network and a packet switched network occurs in the preamble, patentable weight cannot be given. Appellants submit that the Examiner's allegation lacks merit. The recitation that the hybrid network includes a circuit switched network and a packet switched network does not merely recite a purpose of a process or the intended use of a structure. Moreover, the body of claim 10 depends on the recitation that the hybrid network includes a circuit switched network and a packet switched network for completeness. Appellants submit that by ignoring specifically recited features of Appellants' claim 10, the Examiner's rejection of claim 10 is improper.

Further with respect to the above feature, the Examiner alleges:

Applicant's attention is directed to Figs. 1 and 2 of Civanlar for conducting a voice communication through a hybrid network which includes a packet internetwork, such as the Internet, connected to a circuit switched telephone network. Thus, a hybrid network including both a circuit switched telephone network (PSTN) and an Internet-based packet voice network (Internet).

(final Office Action, p. 5). Appellants respectfully disagree with the Examiner's interpretation of CIVANLAR et al.

Fig. 1 of CIVANLAR et al. depicts an intelligent telephone network 100 that includes a long distance network 118 through which a telephone call can be placed. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 10. Thus, this section of CIVANLAR et al. cannot disclose or suggest a network device configured to determine an amount of resources in the hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

Fig. 2 of CIVANLAR et al. depicts an example of individual computer networks 20 and 22 that communicate with one another via Internet 28. Contrary to the Examiner's allegation, this figure of CIVANLAR et al. in no way discloses or suggests a hybrid network that includes a circuit switched network and a packet switched network, as recited in claim 10. Thus, this section of CIVANLAR et al. cannot disclose or suggest a network device configured to determine an amount of resources in the hybrid network (which includes a circuit switched network and a packet switched network) necessary to obtain a requested quality of service, as recited in claim 10.

In paragraph 2 of the Advisory Action (p. 2), the Examiner presents a number of allegations regarding the difference between a *prima facie* case of obviousness and a substantial new question of patentability. Yet, the Examiner does not even attempt to explain how these allegations are relevant to Appellants' claim 10 or Appellants' arguments regarding the Examiner's allegations with respect to claim 10. Accordingly, Appellants request that the honorable Board dismiss these allegations as irrelevant.

In paragraph 3 of the Advisory Action (pp. 2-3), the Examiner alleges that CIVANLAR et al. discloses that network 100 may be or include a circuit switched network, a packet switched network, a data network, an IP telephony network, or include or be a combination thereof. Appellants submit that the Examiner's allegation is unsupported by the CIVANLAR et al. disclosure. Nowhere does CIVANLAR et al. disclose or remotely suggest that CIVANLAR et al.'s network 100 includes "a circuit-switched network, a packet-switched network, a data network, an IP telephony network, or include or be a combination thereof," as the Examiner alleges.

Since CIVANLAR et al. and ANDERSEN et al. do not disclose or suggest a network device configured to determine an amount of resources in the hybrid network necessary to obtain a requested quality of service, CIVANLAR et al. and ANDERSEN et al. cannot disclose or suggest that the network device is further configured to allocate the amount of resources to provide the requested quality of service on the hybrid network, as also recited in claim 10.

With respect to motivation, the Examiner alleges:

[o]ne skilled in the art would have recognized the need for effectively and efficiently providing requested quality of service routing in networks, and would have applied Andersen's novel use of logical networks and a method for setting up a virtual connection to transfer packets through the router apparatus into Civanlar' quality of service parameters in hybrid network communications. Therefore, It would have been obvious ... to apply Andersen et al.'s mechanism for accessing unique features of telephony networks from a protocol-independent data transport interface into Civanlar et al.'s intelligent processing for establishing communication over the internet with the motivation being to provide a system and method for providing requested quality of service in a hybrid network

(final Office Action, pp. 8-9). Appellants respectfully submit that the Examiner's motivation is insufficient for establishing a *prima facie* case of obviousness.

At the outset, Appellants note that ANDERSEN et al. does not mention "logical networks." Thus, it is unclear to what "Andersen's novel use of logical networks" is referring. Moreover, as indicated above, CIVANLAR et al. does not disclose or suggest hybrid network communications. Thus, the Examiner's foundation for combining ANDERSEN et al. with CIVANLAR et al. is flawed.

Appellants submit that it is clear that the Examiner's motivation statement is based on impermissible hindsight. The Examiner's allegation is merely a conclusory statement regarding an alleged benefit of combining ANDERSEN et al. with CIVANLAR et al. Such motivation statements are insufficient for establishing a *prima facie* case of obviousness. In this respect,

Appellants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. Appellants submit that the Examiner's purported motivation to combine the cited references is merely conclusory and based on impermissible hindsight.

For at least the foregoing reasons, Appellants submit that the rejection of claim 10 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. is improper. Accordingly, Appellants request that the rejection be reversed.

Claim 11 depend from claim 10. Therefore, Appellants respectfully request that the rejection of claim 11 under 35 U.S.C. § 103(a) based on CIVANLAR et al. and ANDERSEN et al. be reversed for at least the reasons given above with respect to claim 10.

VIII. CONCLUSION

In view of the foregoing arguments, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections of claims 1-11 under 35 U.S.C. § 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY SNYDER, L.L.P.

By: /John E. Harrity, Reg. No. 43367/
John E. Harrity
Registration No. 43,367

Date: December 12, 2007

11350 Random Hills Road
Suite 600
Fairfax, Virginia 22030
(571) 432-0800

CUSTOMER NUMBER: 25537

IX. CLAIM APPENDIX

1. A method for media communication over a hybrid network which includes a circuit switched network and a packet switched network, comprising:

receiving a request for a media communication by a resource management processor connected to the hybrid network;

determining an amount of resources in the hybrid network necessary to obtain a requested quality of service;

allocating necessary resources to provide the requested quality of service on the hybrid network; and

releasing the necessary resources upon termination of the media communication.

2. The method for media communication in claim 1, further comprising:
creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network; and

transmitting the bill detail record to a call server connection to the hybrid network.

3. The method for media communication in claim 2, further comprising:
transmitting a message to the call server with a third entry indicative of time of termination of the medial communication.

4. The method for media communication in claim 3, further comprising:
creating an additional entry in the bill detail record indicative of a type of
service provided by the hybrid network.
5. The method for media communication in claim 1, further comprising:
determining the requested quality of service by parsing a field from the
request for a media communication.
6. The method for media communication in claim 1, further comprising:
determining the requested quality of service from profile information
associated with a caller of the media communication.
7. A method for media communication over a hybrid network which includes
a circuit switched network and a packet switched network, comprising:
receiving a request for a media communication;
determining an amount of resources in the hybrid network necessary to
obtain a requested quality of service; and
allocating necessary resources to provide the requested quality of service
on the hybrid network.
8. The method of claim 7 further comprising:

releasing the necessary resources upon termination of the media communication.

9. The method of claim 7 further comprising:
creating a bill detail record including an entry indicative of the requested quality of service on the hybrid network, and
transmitting the bill detail record to a call server associated with the hybrid network.

10. A system for media communication over a hybrid network which includes a circuit switched network and a packet switched network, comprising:
a network device configured to:
receive a request for a media communication,
determine an amount of resources in the hybrid network necessary to obtain a requested quality of service, and
allocate the amount of resources to provide the requested quality of service on the hybrid network.

11. The system of claim 10, wherein the network device is further configured to:
release the amount of resources upon termination of the media communication.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.